

Paragraph 6010(a)—Domestic VOR Federal Airways

V-597 [New]

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Issued in Washington, DC, on October 7, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-25213 Filed 10-13-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ANM-10]

Amendment of Class D Airspace; Fort Carson, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Butts Army Airfield, Fort Carson, Colorado, Class D airspace. This action will provide additional controlled airspace for a new instrument approach procedure. The Class D airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 92-ANM-10, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

Development of a new instrument approach procedure to Butts Army Airfield, Fort Carson, Colorado, requires additional controlled airspace for the new procedure.

On September 2, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace for the Butts Army Airfield, Fort Carson, Colorado, (57 FR 40152).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Air Transport Association concurred with the proposal. No other comments were received.

Airspace reclassification, in effect since September 16, 1993, discontinued

the use of the terms "control zone" and "control zone extensions" and replaced them with the designation "Class D airspace" for airspace extending upward from ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice. The geographical coordinates are in North American datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298 July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class D airspace at Fort Carson, CO, to provide additional controlled airspace for a new instrument approach procedure at Butts Army Airfield. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A,

Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

ANM CO D Fort Carson CO [Revised]

Butts Army Airfield, CO

(Lat. 38°41'07" N, long. 104°45'54" W)

Iron Horse NDB, CO

(Lat. 38°40'42" N, long. 104°45'14" W)

Colorado Springs Municipal Airport, CO

(Lat. 38°48'42" N, long. 104°42'42" W)

That airspace extending upward from the surface to but not including 8,400 feet MSL within a 4.3-mile radius of Butts Army Airfield and within 2.2 miles each side of the 146° bearing from the Iron Horse NDB extending from the 4.3-mile radius to 5 miles southeast of the airfield, excluding the Colorado Springs Airport Class C airspace. This Class D airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Director.

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-25209 Filed 10-13-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ANM-9]

Amendment of Class E Airspace; Akron, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Akron, Colorado, Class E airspace. This action is necessary to provide additional controlled airspace for a new instrument approach procedure at the Akron-Washington County Airport. The Class E airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 92-ANM-9, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

Construction of a new runway, and abandonment of the previous runway, required development of a new

instrument approach procedure at the Akron-Washington County Airport. This process requires amendment of controlled airspace for the new approach procedure.

On September 2, 1993, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Akron, Colorado Transition Area (Class E airspace) (57 FR 40153).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The Air Transport Association of America concurred with the proposal. No other comments were received.

Airspace reclassification, in effect since September 16, 1993, discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates in the proposal and in this final rule are in North American datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Akron, Colorado, to provide additional controlled airspace for a new instrument approach procedure.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM CO E5 Akron, CO [Revised]

Akron, Akron-Washington County Airport, CO

(Lat. 40° 10'32" N, long. 103°13'20" W)

Akron VORTAC

(Lat. 40°09'20" N, long. 103°10'47" W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the Akron-Washington County Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 40°06'35" N, long. 102°37'19" W; to lat. 39°42'28" N, long. 102°58'15" W; to lat. 40°00'15" N, long. 103°33'32" W; to lat. 40°24'30" N, long. 103°13'52" N; thence to point of beginning.

* * * * *

Issued in Seattle, Washington, on September 17, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93-25210 Filed 10-13-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 930507-3237]

RIN 0691-AA20

Direct Investment Surveys; Raising the Exemption Level of the BE-15(LF) Long Form of the Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations on direct investment surveys by raising the exemption level for filing the long form of the BE-15, Annual Survey of Foreign Direct Investment in the United States. Under the new rule, the exemption level for filing the long form—Form BE-15(LF)—is raised from \$20 million to \$50 million. Thus, foreign-owned U.S. firms with assets, sales, and net income between \$20 million and \$50 million that previously had to file the long form will now file the more abbreviated short form (Form BE-15(SF)). The survey's overall exemption level below which no reporting is required will remain at \$10 million.

EFFECTIVE DATE: This rule will be effective November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9800.

SUPPLEMENTARY INFORMATION: In the July 16, 1993 Federal Register, Volume 58, No. 135, 58 FR 38324, the Bureau of Economic Analysis (BEA) published a notice of proposed rulemaking that would raise the exemption level for filing the long form of the BE-15, Annual Survey of Foreign Direct Investment in the United States, from \$20 million to \$50 million. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The final rule will bring reporting by nonbank U.S. affiliates in the BE-15 annual survey into closer conformity with their reporting in the 1992 BE-12, Benchmark Survey of Foreign Direct Investment in the United States. The BE-12 is BEA's quinquennial census of foreign direct investment in the United States; it is intended to cover the universe of U.S. affiliates in value terms. (A U.S. affiliate is a U.S. business

enterprise in which a foreign person owns or controls, directly or indirectly, 10 percent or more of the voting securities if an incorporated business enterprise or an equivalent interest if an unincorporated business enterprise.)

The BE-15 annual survey is part of BEA's regular data collection program for foreign direct investment in the United States. Like the benchmark survey, it is mandatory and is conducted under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108, as amended). It obtains annual data on the financial structure and overall operations of nonbank U.S. affiliates of foreign companies. The data are needed to measure, monitor changes in, assess the impact of, and make informed policy decisions on foreign direct investment in the United States.

The annual survey is a sample survey covering only larger nonbank U.S. affiliates—those with assets, sales, or net income that exceed \$10 million. The sample data reported in this survey will be linked to data from the BE-12 benchmark survey in order to derive annual universe estimates of financial and operating data for nonbank U.S. affiliates in nonbenchmark years.

Under this final rule, the \$10 million overall exemption level for the annual survey will not change. However, the exemption level for filing on the long form will be raised from \$20 million to \$50 million—the level used in the BE-12 benchmark survey for determining whether a U.S. affiliate must file a long form (BE-12(LF)) or a short form (BE-12(SF)). As a result, approximately 1,600 reporters will file on the short form rather than on the long form, significantly reducing their burden and the processing burden on BEA.

The new rule will be effective with the BE-15 annual survey covering a U.S. affiliate's 1993 fiscal year. The 1993 forms will be mailed out in March 1994 and will be due May 31, 1994. The last BE-15 survey conducted covered the year 1991. (It should be noted that a BE-15 annual survey is not conducted for a year, such as 1992, that is covered by a BE-12 benchmark survey.)

Paperwork Reduction Act

The collection of information required in this final rule has been approved by OMB (OMB No. 0608-0034).

Public reporting burden for this collection of information is estimated to vary from 1 to 4 hours per short-form response and from 4 to 550 hours per long-form response, with an overall average of 17 hours for both the short and long forms. This includes time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing burden, may be sent to the Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project 0608-0034, Washington, DC 20503.

Executive Order 12612

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rulemaking will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned and many that are will not be required to report in the survey because their assets, sales, and net income are each equal to or less than the \$10 million exemption level below which reporting is not required. Furthermore, by raising the exemption level for reporting on the long form, this rulemaking will ease the burden on firms between \$20 million and \$50 million that previously reported on the long form but will now report on the more abbreviated short form. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 15 CFR Part 806

Foreign investment in the United States, Statistical data, Reporting and recordkeeping requirements.

Dated: September 8, 1993.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. Section 806.15(i) is amended by removing "exceeds \$20,000,000

(positive or negative); a short form, Form BE-15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds \$10,000,000 but no one item exceeds \$20,000,000 (positive or negative); and adding in its place "exceeds \$50,000,000 (positive or negative); a short form, Form BE-15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds \$10,000,000 but no one item exceeds \$50,000,000 (positive or negative)."

[FR Doc. 93-25124 Filed 10-13-93; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8491]

RIN 1545-AN15

Regulations Under Section 446 of the Internal Revenue Code of 1986; Application of Section 446 With Respect to Notional Principal Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the timing of income and deductions with respect to notional principal contracts. The regulations provide taxpayers and IRS personnel with guidance necessary to account for notional principal contracts. The regulations also define actively traded personal property under section 1092(d).

EFFECTIVE DATES: These regulations are effective October 14, 1993.

For applicability of these regulations, see **EFFECTIVE DATES** under the **SUPPLEMENTARY INFORMATION** portion of the preamble.

FOR FURTHER INFORMATION CONTACT:

Alan B. Munro, (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991, the IRS published in the *Federal Register* a notice of proposed rulemaking at 56 FR 31350 (FI-16-89, 1991-2 C.B. 951) under sections 446(b) (relating to general rules for methods of accounting) and 1092(d) (relating to definitions and special rules with respect to straddles) of the Internal Revenue Code of 1986 (Code). The proposed regulations defined a

"notional principal contract" and prescribed rules for the timing of income and deductions from these contracts. The proposed regulations also provided an election by which dealers and traders in notional principal contracts and other derivative financial instruments could mark their derivative instruments to market. Finally, the proposed regulations defined "actively traded personal property" and prescribed the extent to which notional principal contracts are treated as actively traded for purposes of section 1092.

The IRS received a number of written comments on the proposed regulations and held a public hearing on the regulations on October 7, 1991. After consideration of all the comments, the regulations proposed by FI-16-89 are adopted as revised by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

Definitions and Scope

Most commenters felt that the definitions of "notional principal contract," "specified index," and "notional principal amount" provided in the proposed regulations adequately covered most notional principal contracts. Several commenters, however, requested that the definitions be expanded to include specified indices based on property that is not publicly traded and notional principal amounts that amortize or otherwise vary over the term of the contract. To accommodate these requests, the final regulations provide that a specified index may be almost any fixed rate or variable rate, price, or amount based on current, objectively determinable financial or economic information. In light of the broad definition of specified index, the IRS is considering whether notional principal contracts involving certain specified indices (e.g., one issuer's stock) should be excluded from the general sourcing rules of sections 861 through 865 and whether contracts involving other specified indices (e.g., United States real property) are subject to section 897.

The final regulations also allow the notional principal amount to vary and clarify that the regulations apply to currency swaps, except to the extent that section 988 and the regulations thereunder provide different rules for those contracts. The final regulations further provide that notional principal contracts that may be extended or terminated at the option of a party to the contract are contracts covered by this regulation.

Periodic Payments

The provisions in the final regulations for the taxable year of inclusion and deduction of periodic payments generally follow the proposed regulations. In lieu of the proposed rule on short first or last intervals, the definition of a periodic payment is revised to refer to all payments that are made at intervals of one year or less during the entire term of the contract.

To provide further flexibility, payments based on a notional principal amount that varies may be periodic payments if the obligations of the other party are measured by a notional principal amount that varies in the same proportion. For example, if a swap calls for one party to make payments based on a dollar notional amount and the counterparty to make payments based on a fixed number of ounces of gold, the swap may also provide that both notional amounts decline by the same predetermined percentage each year during the term of the swap.

Nonperiodic Payments

The final regulations retain the general rules for amortizing nonperiodic payments for swaps, caps, and floors in accordance with the prices of a series of cash-settled forward contracts (in the case of a swap) or option contracts (in the case of a cap or floor) in order to reflect the economic substance of the contract. Several commenters asked whether these rules mean that periodic payments are treated as if underlying forward or option contracts are being settled or are expiring. For tax purposes, the regulations treat a notional principal contract as a single instrument. Although a series of hypothetical forward or option contracts may be used to determine how to amortize a nonperiodic payment with respect to the contract, nothing in the regulations supports characterizing either periodic or nonperiodic payments as attributable to the settlement, exercise, cancellation, lapse, expiration, or other termination of forward or option contracts.

Several commenters complained that the rules for amortizing nonperiodic payments in the proposed regulations were too complex. The final regulations address these concerns by expanding the availability of simplified alternative methods. The proposed regulations, for example, limited the "level payment constant yield to maturity" amortization method to a nonperiodic payment made with respect to an interest rate swap. Under the final regulations, a nonperiodic payment made or received with respect to any swap contract may be amortized using the level payment

method, and taxpayers may use more than one discount rate (such as the zero coupon bond curve) in determining the level payments.

The preamble to the proposed regulations included a sample revenue procedure that would have provided a table for amortizing cap and floor premiums. The commenters felt that the amortization table was inflexible and therefore of limited utility. Under the final regulations, the payment for a cap or a floor that hedges debt instrument's held or issued by the taxpayer may instead be amortized using the same level payment method permitted for swaps. For example, a cap or floor premium paid at the inception of the contract is amortized as a series of payments made over the term of the contract, and is therefore recognized in increasing amounts that reflect amortization of principal on a deemed level payment self-amortizing loan. For timing purposes, the level payment method has the effect of treating the cap or floor premium as a discount or premium on the debt instrument (or instruments) being hedged. The IRS continues to consider the possibility of integration or hedge accounting rules for notional principal contracts and other derivative financial instruments.

The final regulations also include an example that clarifies the application of the alternative amortization methods to nonperiodic payments that are paid other than at the inception of the contract. The final regulations provide that, solely for timing purposes, these nonperiodic payments are treated as an upfront payment and a loan from the payee to the payor. See *Example 6* in § 1.446-3(f)(4). The IRS considered a number of alternative amortization methods that produce similar results. The IRS selected this method because it was included in the proposed regulation and can be extended to caps, floors, and swaps regardless of when the nonperiodic payments are made. The final regulations do not include any examples of how to treat nonperiodic payments that are not fixed in amount at the inception of the contract. The IRS expects to address contingent payments in future regulations, and welcomes comments on the treatment of those payments.

Special Rules

The special rules in the proposed regulations have been slightly modified in the final regulations. In particular, the proposed regulations did not allow a taxpayer to use the optional methods for amortizing nonperiodic payments if a notional principal contract was hedged with other financial

instruments. The final regulations clarify that this rule does not apply to a notional principal contract that hedges debt. Although many commenters requested that the IRS define more explicitly what constitutes a "significant" nonperiodic swap payment, the final regulations retain the test set out in the proposed regulations. The IRS is working on a project dealing more generally with off-market and prepaid financial instruments, however, and may amend these regulations to accord with the decisions reached in that project. Because the IRS anticipates that the regulations governing off-market and prepaid financial instruments will address in-the-money caps, floors, forwards, and options in a comprehensive fashion, the rules on significantly in-the-money caps and floors found in § 1.446-3(e)(4)(iv) of the proposed regulations remain in proposed form. The IRS welcomes comments and suggestions from taxpayers on when a swap, cap, or floor should be treated as including a loan under the rules being developed.

Termination Payments

Many commenters objected to the rule in the proposed regulations that a termination payment is recognized by all of the parties to the contract. Of particular concern was the effect of this rule where one party to a swap assigns its rights and obligations and the counterparty is deemed to have made or received a termination payment. This rule has been revised to reflect that whether an assignment by one party results in a deemed exchange of contracts by the counterparty (and, therefore, realization of gain or loss by the counterparty) is determined under section 1001 of the Code and the regulations thereunder. A recent notice of proposed rulemaking (FI-31-92, published at 57 FR 57034) deals with similar issues raised by the modification of debt instruments. The final regulations make it clear that any gain or loss realized on an actual or deemed exchange of a notional principal contract is a termination payment. The final regulations also clarify that certain payments made or received to assign only the rights or the obligations under a notional principal contract are not termination payments. These payments are either loans or nonperiodic payments.

Definition of Actively Traded Personal Property

Finally, the IRS received a variety of comments that questioned the decision to treat notional principal contracts as actively traded personal property for

purposes of section 1092. The IRS believes that the term "actively traded" under section 1092 was intended to cover financial instruments that are liquid or easily offset, even when those instruments are not traded on an exchange or in a recognized secondary market.

The final regulations generally adopt the rule in the proposed regulations. In response to several comments, however, the final regulations specify that a notional principal contract is treated as actively traded only when contracts with the same (or substantially similar) indices are purchased, sold, or entered into on established financial markets, and clarifies the interaction of that rule with section 1234A. See § 1.1092(d)-1(c)(2), which states that the rights and obligations of a party to a notional principal contract are rights and obligations with respect to personal property. Taxpayers should note that a straddle under section 1092 may also be treated as a conversion transaction under new section 1258.

The final regulations also reflect comments received on the definition of publicly traded property in the proposed regulations and in proposed regulations under sections 1271 through 1275 of the Code. The IRS will consider requests for administrative relief in instances where the proposed regulations have been changed and a taxpayer detrimentally relied on the proposed regulations.

Regulations Not Made Final

As described above, the special rules for significantly in-the-money caps and floors found in § 1.446-3(e)(4)(iv) of the proposed regulations remain in proposed form. In addition, in view of the enactment of section 475 of the Code, which requires dealers to mark certain securities to market, § 1.446-4 of the proposed regulations is being withdrawn by separate notice.

Effective Dates

Except for § 1.1092(d)-1, these regulations are effective for notional principal contracts entered into on or after December 13, 1993. For contracts entered into before that date, the Commissioner generally will treat a method of accounting as clearly reflecting income if it takes payments into account over the life of the contract under a reasonable amortization method, whether or not the method satisfies the rules in the proposed or final regulations. See Notice 89-21, 1989-1 C.B. 651, 652. The IRS intends to issue a revenue procedure prescribing the terms and conditions for effecting method changes to comply with the

final regulations. The revenue procedure will generally permit expedited method changes on a Form 3115 attached to the tax return for the year of change. Section 1.1092(d)-1(b)(1)(vii) is effective for positions entered into on or after October 14, 1993, and § 1.1092(d)-1(c) is effective for positions entered into on or after July 8, 1991.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Karl T. Walli of the Office of Associate Chief Counsel (International) and Alan B. Munro of the Office of Assistant Chief Counsel (Financial Institutions and Products), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.61-14(b) is amended by adding paragraph (b)(7) to read as follows:

§ 1.61-14 Miscellaneous items of gross income.

* * * * *

(b) * * *

(7) Notional principal contracts, see § 1.446-3.

Par. 3. Section 1.162-1 is amended by adding paragraph (b)(8) to read as follows:

§ 1.162-1 Business expenses.

(b) * * *

(8) For the timing of deductions with respect to notional principal contracts, see § 1.446-3.

Par. 4. Section 1.446-3 is added to read as follows:

§ 1.446-3 Notional principal contracts.

(a) *Table of contents.* This paragraph (a) lists captioned paragraphs contained in § 1.446-3.

§ 1.446-3 Notional principal contracts.

(a) Table of contents.

(b) Purpose.

(c) Definitions and scope.

(1) Notional principal contract.

(i) In general.

(ii) Excluded contracts.

(iii) Transactions within section 475.

(iv) Transactions within section 988.

(2) Specified index.

(3) Notional principal amount.

(4) Special definitions.

(i) Related person and party to the contract.

(ii) Objective financial information.

(iii) Dealer in notional principal contracts.

(d) Taxable year of inclusion and deduction.

(e) Periodic payments.

(1) Definition.

(2) Recognition rules.

(i) In general.

(ii) Rate set in arrears.

(iii) Notional principal amount set in arrears.

(3) Examples.

(f) Nonperiodic payments.

(1) Definition.

(2) Recognition rules.

(i) In general.

(ii) General rule for swaps.

(iii) Alternative methods for swaps.

(A) Prepaid swaps.

(B) Other nonperiodic swap payments.

(iv) General rule for caps and floors.

(v) Alternative methods for caps and floors that hedge debt instruments.

(A) Prepaid caps and floors.

(B) Other caps and floors.

(C) Special method for collars.

(vi) Additional methods.

(3) Term of extendible or terminable contracts.

(4) Examples.

(g) Special rules.

(1) Disguised notional principal contracts.

(2) Hedged notional principal contracts.

(3) Options and forwards to enter into notional principal contracts.

(4) Swaps with significant nonperiodic payments.

(5) Caps and floors that are significantly in-the-money. [Reserved]

(6) Examples.

(h) Termination payments.

(1) Definition.

(2) Taxable year of inclusion and deduction by original parties.

(3) Taxable year of inclusion and deduction by assignees.

(4) Special rules.

(i) Assignment of one leg of a contract.

(ii) Substance over form.

(5) Examples.

(i) Anti-abuse rule.

(j) Effective date.

(b) *Purpose.* The purpose of this section is to enable the clear reflection of the income and deductions from notional principal contracts by prescribing accounting methods that reflect the economic substance of such contracts.

(c) *Definitions and scope—(1)*

Notional principal contract—(i) In general. A notional principal contract is a financial instrument that provides for the payment of amounts by one party to another at specified intervals calculated by reference to a specified index upon a notional principal amount in exchange for specified consideration or a promise to pay similar amounts. An agreement between a taxpayer and a qualified business unit (as defined in section 989(a)) of the taxpayer, or among qualified business units of the same taxpayer, is not a notional principal contract because a taxpayer cannot enter into a contract with itself. Notional principal contracts governed by this section include interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements. A collar is not itself a notional principal contract, but certain caps and floors that comprise a collar may be treated as a single notional principal contract under paragraph (f)(2)(v)(C) of this section. A contract may be a notional principal contract governed by this section even though the term of the contract is subject to termination or extension. Each confirmation under a master agreement to enter into agreements governed by this section is treated as a separate notional principal contract.

(ii) *Excluded contracts.* A contract described in section 1256(b), a futures contract, a forward contract, and an option are not notional principal contracts. An instrument or contract that constitutes indebtedness under general principles of Federal income tax law is not a notional principal contract. An option or forward contract that entitles or obligates a person to enter into a notional principal contract is not a notional principal contract, but payments made under such an option or forward contract may be governed by paragraph (g)(3) of this section.

(iii) *Transactions within section 475.* To the extent that the rules provided in paragraphs (e) and (f) of this section are inconsistent with the rules that apply to any notional principal contract that is

governed by section 475 and regulations thereunder, the rules of section 475 and the regulations thereunder govern.

(iv) *Transactions within section 988.* To the extent that the rules provided in this section are inconsistent with the rules that apply to any notional principal contract that is also a section 988 transaction or that is integrated with other property or debt pursuant to section 988(d), the rules of section 988 and the regulations thereunder govern.

(2) *Specified index.* A specified index is—

(i) A fixed rate, price, or amount;

(ii) A fixed rate, price, or amount applicable in one or more specified periods followed by one or more different fixed rates, prices, or amounts applicable in other periods;

(iii) An index that is based on objective financial information (as defined in paragraph (c)(4)(ii) of this section); and

(iv) An interest rate index that is regularly used in normal lending transactions between a party to the contract and unrelated persons.

(3) *Notional principal amount.* For purposes of this section, a notional principal amount is any specified amount of money or property that, when multiplied by a specified index, measures a party's rights and obligations under the contract, but is not borrowed or loaned between the parties as part of the contract. The notional principal amount may vary over the term of the contract, provided that it is set in advance or varies based on objective financial information (as defined in paragraph (c)(4)(ii) of this section).

(4) *Special definitions—(i) Related person and party to the contract.* A related person is a person related (within the meaning of section 267(b) or 707(b)(1)) to one of the parties to the notional principal contract or a member of the same consolidated group (as defined in § 1.1502-1(h)) as one of the parties to the contract. For purposes of this paragraph (c), a related person is considered to be a party to the contract.

(ii) *Objective financial information.* For purposes of this paragraph (c), objective financial information is any current, objectively determinable financial or economic information that is not within the control of any of the parties to the contract and is not unique to one of the parties' circumstances (such as one party's dividends, profits, or the value of its stock). Thus, for example, a notional principal amount may be based on a broadly-based equity index or the outstanding balance of a pool of mortgages, but not on the value of a party's stock.

(iii) *Dealer in notional principal contracts.* A dealer in notional principal contracts is a person who regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in notional principal contracts with customers in the ordinary course of a trade or business.

(d) *Taxable year of inclusion and deduction.* For all purposes of the Code, the net income or net deduction from a notional principal contract for a taxable year is included in or deducted from gross income for that taxable year. The net income or net deduction from a notional principal contract for a taxable year equals the total of all of the periodic payments that are recognized from that contract for the taxable year under paragraph (e) of this section and all of the nonperiodic payments that are recognized from that contract for the taxable year under paragraph (f) of this section.

(e) *Periodic payments—(1) Definition.* Periodic payments are payments made or received pursuant to a notional principal contract that are payable at intervals of one year or less during the entire term of the contract (including any extension periods provided for in the contract), that are based on a specified index described in paragraph (c)(2)(i), (iii), or (iv) of this section (appropriately adjusted for the length of the interval), and that are based on either a single notional principal amount or a notional principal amount that varies over the term of the contract in the same proportion as the notional principal amount that measures the other party's payments. Payments to purchase or sell a cap or a floor, however, are not periodic payments.

(2) *Recognition rules—(i) In general.* All taxpayers, regardless of their method of accounting, must recognize the ratable daily portion of a periodic payment for the taxable year to which that portion relates.

(ii) *Rate set in arrears.* If the amount of a periodic payment is not determinable at the end of a taxable year because the value of the specified index is not fixed until a date that occurs after the end of the taxable year, the ratable daily portion of a periodic payment that relates to that taxable year is generally based on the specified index that would have applied if the specified index were fixed as of the last day of the taxable year. If a taxpayer determines that the value of the specified index as of the last day of the taxable year does not provide a reasonable estimate of the specified index that will apply when the payment is fixed, the taxpayer may use a reasonable estimate of the specified index each year, provided that the

taxpayer (and any related person that is a party to the contract) uses the same method to make the estimate consistently from year to year and uses the same estimate for purposes of all financial reports to equity holders and creditors. The taxpayer's treatment of notional principal contracts with substantially similar specified indices will be considered in determining whether the taxpayer's estimate of the specified index is reasonable. Any difference between the amount that is recognized under this paragraph (e)(2)(ii) and the corresponding portion of the actual payment that becomes fixed under the contract is taken into account as an adjustment to the net income or net deduction from the notional principal contract for the taxable year during which the payment becomes fixed.

(iii) *Notional principal amount set in arrears.* Rules similar to the rules of paragraph (e)(2)(ii) of this section apply if the amount of a periodic payment is not determinable at the end of a taxable year because the notional principal amount is not fixed until a date that occurs after the end of the taxable year.

(3) *Examples.* The following examples illustrate the application of paragraph (e) of this section.

Example 1. Accrual of periodic swap payments. (a) On April 1, 1995, A enters into a contract with unrelated counterparty B under which, for a term of five years, A is obligated to make a payment to B each April 1, beginning April 1, 1996, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined on the immediately preceding April 1, multiplied by a notional principal amount of \$100 million. Under the contract, B is obligated to make a payment to A each April 1, beginning April 1, 1996, in an amount equal to 8% multiplied by the same notional principal amount. A and B are calendar year taxpayers that use the accrual method of accounting. On April 1, 1995, LIBOR is 7.80%.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and both LIBOR and a fixed interest rate of 8% are specified indices under paragraph (c)(2) of this section. All of the payments to be made by A and B are periodic payments under paragraph (e)(1) of this section because each party's payments are based on a specified index described in paragraphs (c)(2)(iii) and (c)(2)(i) of this section, respectively, are payable at periodic intervals of one year or less throughout the term of the contract, and are based on a single notional principal amount.

(c) Under the terms of the swap agreement, on April 1, 1996, B is obligated to make a payment to A of \$8,000,000 ($8\% \times \$100,000,000$) and A is obligated to make a payment to B of \$7,800,000 ($7.80\% \times \$100,000,000$). Under paragraph (e)(2)(i) of this section, the ratable daily portions for 1995 are the amounts of these periodic

payments that are attributable to A's and B's taxable year ending December 31, 1995. The ratable daily portion of the 8% fixed leg is \$6,010,929 ($275 \text{ days}/366 \text{ days} \times \$8,000,000$), and the ratable daily portion of the floating leg is \$5,860,656 ($275 \text{ days}/366 \text{ days} \times \$7,800,000$). The net amount for the taxable year is the difference between the ratable daily portions of the two periodic payments, or \$150,273 ($\$6,010,929 - \$5,860,656$). Accordingly, A has net income of \$150,273 from this swap for 1995, and B has a corresponding net deduction of \$150,273.

(d) The \$49,727 unrecognized balance of the \$200,000 net periodic payment that is made on April 1, 1996, is included in A's and B's net income or net deduction from the contract for 1996.

(e) If the parties had entered into the contract on February 1, 1995, the result would not change because no portion of either party's obligation to make a payment under the swap relates to the period prior to April 1, 1995. Consequently, under paragraph (e)(2) of this section, neither party would accrue any income or deduction from the swap for the period from February 1, 1995, through March 31, 1995.

Example 2. Accrual of periodic swap payments by cash method taxpayer. (a) On April 1, 1995, C enters into a contract with unrelated counterparty D under which, for a period of five years, C is obligated to make a fixed payment to D each April 1, beginning April 1, 1996, in an amount equal to 8% multiplied by a notional principal amount of \$100 million. D is obligated to make semi-annual payments to C each April 1 and October 1, beginning October 1, 1995, in an amount equal to one-half of the LIBOR amount as of the first day of the preceding 6-month period multiplied by the notional principal amount. The payments are to be calculated using a 30/360 day convention. C is a calendar year taxpayer that uses the accrual method of accounting. D is a calendar year taxpayer that uses the cash receipts and disbursements method of accounting. LIBOR is 7.80% on April 1, 1995, and 7.46% on October 1, 1995.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and LIBOR and the fixed interest rate of 8% are each specified indices under paragraph (c)(2) of this section. All of the payments to be made by C and D are periodic payments under paragraph (e)(1) of this section because they are each based on appropriate specified indices, are payable at periodic intervals of one year or less throughout the term of the contract, and are based on a single notional principal amount.

(c) Under the terms of the swap agreement, D pays C \$3,900,000 ($0.5 \times 7.8\% \times \$100,000,000$) on October 1, 1995. In addition, D is obligated to pay C \$3,730,000 ($0.5 \times 7.46\% \times \$100,000,000$) on April 1, 1996. C is obligated to pay D \$8,000,000 on April 1, 1996. Under paragraph (e)(2)(i) of this section, C's and D's ratable daily portions for 1995 are the amounts of the periodic payments that are attributable to their taxable year ending December 31, 1995. The ratable daily portion of the 8% fixed leg is \$6,000,000 ($270 \text{ days}/360 \text{ days} \times \$8,000,000$), and the ratable daily portion of

the floating leg is \$5,765,000 (\$3,900,000 + (90 days/180 days x \$3,730,000)). Thus, C's net deduction from the contract for 1995 is \$235,000 (\$6,000,000 - \$5,765,000) and D reports \$235,000 of net income from the contract for 1995.

(d) The net unrecognized balance of \$135,000 (\$2,000,000 balance of the fixed leg - \$1,865,000 balance of the floating leg) is included in C's and D's net income or net deduction from the contract for 1996.

Example 3. Accrual of swap payments on index set in arrears. (a) The facts are the same as in Example 1, except that A's obligation to make payments based upon LIBOR is determined by reference to LIBOR on the day each payment is due. LIBOR is 8.25% on December 31, 1995, and 8.16% on April 1, 1996.

(b) On December 31, 1995, the amount that A is obligated to pay B is not known because it will not become fixed until April 1, 1996. Under paragraph (e)(2)(ii) of this section, the ratable daily portion of the periodic payment from A to B for 1995 is based on the value of LIBOR on December 31, 1995 (unless A or B determines that the value of LIBOR on that day does not reasonably estimate the value of the specified index). Thus, the ratable daily portion of the floating leg is \$6,198,770 (275 days/366 days x 8.25% x \$100,000,000), while the ratable daily portion of the fixed leg is \$6,010,929 (275 days/366 days x \$8,000,000). The net amount for 1995 on this swap is \$187,841 (\$6,198,770 - \$6,010,929). Accordingly, B has \$187,841 of net income from the swap in 1995, and A has a net deduction of \$187,841.

(c) On April 1, 1996, A makes a net payment to B of \$160,000 (\$8,160,000 payment on the floating leg - \$8,000,000 payment on the fixed leg). For purposes of determining their net income or net deduction from this contract for the year ended December 31, 1996, B and A must adjust the net income and net deduction they recognized in 1995 by \$67,623 (275 days/366 days x (\$8,250,000 presumed payment on the floating leg - \$8,160,000 actual payment on the floating leg)).

(f) Nonperiodic payments—(1) Definition. A nonperiodic payment is any payment made or received with respect to a notional principal contract that is not a periodic payment (as defined in paragraph (e)(1) of this section) or a termination payment (as defined in paragraph (h) of this section). Examples of nonperiodic payments are the premium for a cap or floor agreement (even if it is paid in installments), the payment for an off-market swap agreement, the prepayment of part or all of one leg of a swap, and the premium for an option to enter into a swap if and when the option is exercised.

(2) Recognition rules—(i) In general. All taxpayers, regardless of their method of accounting, must recognize the ratable daily portion of a nonperiodic payment for the taxable year to which that portion relates. Generally, a

nonperiodic payment must be recognized over the term of a notional principal contract in a manner that reflects the economic substance of the contract.

(ii) General rule for swaps. A nonperiodic payment that relates to a swap must be recognized over the term of the contract by allocating it in accordance with the forward rates (or, in the case of a commodity, the forward prices) of a series of cash-settled forward contracts that reflect the specified index and the notional principal amount. For purposes of this allocation, the forward rates or prices used to determine the amount of the nonperiodic payment will be respected, if reasonable. See paragraph (f)(4) Example 7 of this section.

(iii) Alternative methods for swaps. Solely for purposes of determining the timing of income and deductions, a nonperiodic payment made or received with respect to a swap may be allocated to each period of the swap contract using one of the methods described in this paragraph (f)(2)(iii). The alternative methods may not be used by a dealer in notional principal contracts (as defined in paragraph (c)(4)(iii) of this section) for swaps entered into or acquired in its capacity as a dealer.

(A) Prepaid swaps. An upfront payment on a swap may be amortized by assuming that the nonperiodic payment represents the present value of a series of equal payments made throughout the term of the swap contract (the level payment method), adjusted as appropriate to take account of increases or decreases in the notional principal amount. The discount rate used in this calculation must be the rate (or rates) used by the parties to determine the amount of the nonperiodic payment. If that rate is not readily ascertainable, the discount rate used must be a rate that is reasonable under the circumstances. Under this method, an upfront payment is allocated by dividing each equal payment into its principal recovery and time value components. The principal recovery components of the equal payments are treated as periodic payments that are deemed to be made on each of the dates that the swap contract provides for periodic payments by the payor of the nonperiodic payment or, if none, on each of the dates that the swap contract provides for periodic payments by the recipient of the nonperiodic payment. The time value component is needed to compute the amortization of the nonperiodic payment, but is otherwise disregarded. See paragraph (f)(4) Example 5 of this section.

(B) Other nonperiodic swap payments. Nonperiodic payments on a swap other than an upfront payment may be amortized by treating the contract as if it provided for a single upfront payment (equal to the present value of the nonperiodic payments) and a loan between the parties. The discount rate (or rates) used in determining the deemed upfront payment and the time value component of the deemed loan is the same as the rate (or rates) used in the level payment method. The single upfront payment is then amortized under the level payment method described in paragraph (f)(2)(iii)(A) of this section. The time value component of the loan is not treated as interest, but, together with the amortized amount of the deemed upfront payment, is recognized as a periodic payment. See paragraph (f)(4) Example 6 of this section. If both parties make nonperiodic payments, this calculation is done separately for the nonperiodic payments made by each party.

(iv) General rule for caps and floors. A payment to purchase or sell a cap or floor must be recognized over the term of the agreement by allocating it in accordance with the prices of a series of cash-settled option contracts that reflect the specified index and the notional principal amount. For purposes of this allocation, the option pricing used by the parties to determine the total amount paid for the cap or floor will be respected, if reasonable. Only the portion of the purchase price that is allocable to the option contract or contracts that expire during a particular period is recognized for that period. Thus, under this paragraph (f)(2)(iv), straight-line or accelerated amortization of a cap premium is generally not permitted. See paragraph (f)(4) Examples 1 and 2 of this section.

(v) Alternative methods for caps and floors that hedge debt instruments. Solely for purposes of determining the timing of income and deductions, if a cap or floor is entered into primarily to reduce risk with respect to a specific debt instrument or group of debt instruments held or issued by the taxpayer, the taxpayer may amortize a payment to purchase or sell the cap or floor using the methods described in this paragraph (f)(2)(v), adjusted as appropriate to take account of increases or decreases in the notional principal amount. The alternative methods may not be used by a dealer in notional principal contracts (as defined in paragraph (c)(4)(iii) of this section) for caps or floors entered into or acquired in its capacity as a dealer.

(A) Prepaid caps and floors. A premium paid upfront for a cap or a

floor may be amortized using the "level payment method" described in paragraph (f)(2)(iii)(A) of this section. See paragraph (f)(4) Example 3 of this section.

(B) *Other caps and floors.*

Nonperiodic payments on a cap or floor other than an upfront payment are amortized by treating the contract as if it provided for a single upfront payment (equal to the present value of the nonperiodic payments) and a loan between the parties as described in paragraph (f)(2)(iii)(B) of this section. Under the level payment method, a cap or floor premium paid in level annual installments over the term of the contract is effectively included or deducted from income ratably, in accordance with the level payments. See paragraph (f)(4) Example 4 of this section.

(C) *Special method for collars.* A taxpayer may also treat a cap and a floor that comprise a collar as a single notional principal contract and may amortize the net nonperiodic payment to enter into the cap and floor over the term of the collar in accordance with the methods prescribed in this paragraph (f)(2)(v).

(vi) *Additional methods.* The Commissioner may, by a revenue ruling or a revenue procedure published in the Internal Revenue Bulletin, provide alternative methods for allocating nonperiodic payments that relate to a notional principal contract to each year of the contract. See § 601.601(d)(2)(ii)(b) of this chapter.

(3) *Term of extendible or terminable contracts.* For purposes of this paragraph (f), the term of a notional principal contract that is subject to extension or termination is the reasonably expected term of the contract.

(4) *Examples.* The following examples illustrate the application of paragraph (f) of this section.

Example 1. Cap premium amortized using general rule. (a) On January 1, 1995, when LIBOR is 8%, F pays unrelated party E \$600,000 for a contract that obligates E to make a payment to F each quarter equal to one-quarter of the excess, if any, of three-

month LIBOR over 9% with respect to a notional principal amount of \$25 million. Both E and F are calendar year taxpayers. E provides F with a schedule of allocable premium amounts indicating that the cap was priced according to a reasonable variation of the Black-Scholes option pricing formula and that the total premium is allocable to the following periods:

	Pricing allocation
1995	\$55,000
1996	225,000
1997	320,000
	\$600,000

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and LIBOR is a specified index under paragraph (c)(2)(iii) of this section. Any payments made by E to F are periodic payments under paragraph (e)(1) of this section because they are payable at periodic intervals of one year or less throughout the term of the contract, are based on an appropriate specified index, and are based on a single notional principal amount. The \$600,000 cap premium paid by F to E is a nonperiodic payment as defined in paragraph (f)(1) of this section.

(c) The Black-Scholes model is recognized in the financial industry as a standard technique for pricing interest rate cap agreements. Therefore, because E has used a reasonable option pricing model, the schedule generated by E is consistent with the economic substance of the cap, and may be used by both E and F for calculating their ratable daily portions of the cap premium. Under paragraph (f)(2)(iv) of this section, E recognizes the ratable daily portion of the cap premium as income, and F recognizes the ratable daily portion of the cap premium as a deduction based on the pricing schedule. Thus, E and F account for the contract as follows:

	Ratable daily portion
1995	\$55,000
1996	225,000
1997	320,000
	\$600,000

(d) Any periodic payments under the cap agreement (that is, payments that E makes to F because LIBOR exceeds 9%) are included in the parties' net income or net deduction

from the contract in accordance with paragraph (e)(2) of this section.

Example 2. Cap premium allocated to proper period. (a) The facts are the same as in Example 1, except that the cap is purchased by F on November 1, 1994. The first determination date under the cap agreement is January 31, 1995 (the last day of the first quarter to which the contract relates). LIBOR is 9.1% on December 31, 1994, and is 9.15% on January 31, 1995.

(b) E and F recognize \$9,192 (61 days/365 days x \$55,000) as the ratable daily portion of the nonperiodic payment for 1994, and include that amount in their net income or net deduction from the contract for 1994. If E's pricing model allocated the cap premium to each quarter covered by the contract, the ratable daily portion would be 61 days/92 days times the premium allocated to the first quarter.

(c) Under paragraph (e)(2)(ii) of this section, E and F calculate the payments using LIBOR as of December 31, 1994. F recognizes as income the ratable daily portion of the presumed payment, or \$4,144 (61 days/92 days x .25 x .001 x \$25,000,000). Thus, E reports \$5,048 of net income from the contract for 1994 (\$9,192-\$4,144), and F reports a net deduction from the contract of \$5,048.

(d) On January 31, 1995, E pays F \$9,375 (.25 x .0015 x \$25,000,000) under the terms of the cap agreement. For purposes of determining their net income or net deduction from this contract for the year ended December 31, 1995, E and F must adjust their respective net income and net deduction from the cap by \$2,072 (61 days/92 days x (\$9,375 actual payment under the cap on January 31, 1995-\$6,250 presumed payment under the cap on December 31, 1994)).

Example 3. Cap premium amortized using alternative method. (a) The facts are the same as in Example 1, except that the cap provides for annual payments by E and is entered into by F primarily to reduce risk with respect to a debt instrument issued by F. F elects to amortize the cap premium using the alternative level payment method provided under paragraph (f)(2)(v)(A) of this section. Under that method, F amortizes the cap premium by assuming that the \$600,000 is repaid in 3 equal annual payments of \$241,269, assuming a discount rate of 10%. Each payment is divided into a time value component and a principal component, which are set out below.

	Level payment	Time value component	Principal component
1995	\$241,269	\$60,000	\$181,269
1996	241,269	41,873	199,396
1997	241,269	21,834	219,335
	\$723,807	\$123,807	\$600,000

(b) The net of the ratable daily portions of the principal component and the payments,

if any, received from E comprise F's annual net income or net deduction from the cap.

The time value components are needed only

to compute the ratable daily portions of the cap premium, and are otherwise disregarded.

Example 4. Cap premium paid in level installments and amortized using alternative method. (a) The facts are the same as in Example 3, except that *F* agrees to pay for the

cap in three level installments of \$241,269 (a total of \$723,807) on December 31, 1995, 1996, and 1997. The present value of three payments of \$241,269, discounted at 10%, is \$600,000. For purposes of amortizing the cap premium under the alternative method

provided in paragraph (f)(2)(v)(B) of this section, *F* is treated as paying \$600,000 for the cap on January 1, 1995, and borrowing \$600,000 from *E* that will be repaid in three annual installments of \$241,269. The time value component of the loan is computed as follows:

	Loan balance	Time value component	Principal component
1995	\$600,000	\$60,000	\$181,269
1996	418,731	41,873	199,396
1997	219,335	21,934	219,335
		\$123,807	\$600,000

(b) *F* is treated as making periodic payments equal to the amortized principal components from a \$600,000 cap paid in advance (as described in Example 3), increased by the time value components of the \$600,000 loan, which totals \$241,269 each year. The time value components of the \$600,000 loan are included in the periodic payments made by *F*, but are not characterized as interest income or expense. The effect of the alternative method in this situation is to allow *F* to amortize the cap premium in level installments, the same way it is paid. The net of the ratable daily portions of *F*'s deemed periodic payments and the payments, if any, received from *E* comprise *F*'s annual net income or net deduction from the cap.

Example 5. Upfront interest rate swap payment amortized using alternative method.

(a) On January 1, 1995, *G* enters into an interest rate swap agreement with unrelated counterparty *H* under which, for a term of five years, *G* is obligated to make annual payments at 11% and *H* is obligated to make annual payments at LIBOR on a notional principal amount of \$100 million. At the time *G* and *H* enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, on January 1, 1995, *H* pays *G* a yield adjustment fee of \$3,790,786. *G* provides *H* with information that indicates that the amount of the yield adjustment fee was determined as the present value, at 10% compounded annually, of five annual payments of

\$1,000,000 (1% x \$100,000,000). *G* and *H* are calendar year taxpayers.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section. The yield adjustment fee is a nonperiodic payment as defined in paragraph (f)(1) of this section.

(c) Under the alternative method described in paragraph (f)(2)(iii)(A) of this section, the yield adjustment fee is recognized over the life of the agreement by assuming that the \$3,790,786 is repaid in five level payments. Assuming a constant yield to maturity and annual compounding at 10%, the ratable daily portions are computed as follows:

	Level payment	Time value component	Principal component
1995	\$1,000,000	\$379,079	\$620,921
1996	1,000,000	316,987	683,013
1997	1,000,000	248,685	751,315
1998	1,000,000	173,554	826,446
1999	1,000,000	90,909	909,091
	\$5,000,000	\$1,209,214	\$3,790,786

(d) *G* also makes swap payments to *H* at 11%, while *H* makes swap payments to *G* based on LIBOR. The net of the ratable daily portions of the 11% payments by *G*, the LIBOR payments by *H*, and the principal component of the yield adjustment fee paid by *H* determines the annual net income or net deduction from the contract for both *G* and *H*. The time value components are

needed only to compute the ratable daily portions of the yield adjustment fee paid by *H*, and are otherwise disregarded.

Example 6. Backloaded interest rate swap payment amortized using alternative method.

(a) The facts are the same as in Example 5, but *H* agrees to pay *G* a yield adjustment fee of \$6,105,100 on December 31, 1999. Under the alternative method in paragraph

(f)(2)(iii)(B) of this section, *H* is treated as paying a yield adjustment fee of \$3,790,786 (the present value of \$6,105,100, discounted at a 10% rate with annual compounding) on January 1, 1995. Solely for timing purposes, *H* is treated as borrowing \$3,790,786 from *G*. Assuming annual compounding at 10%, the time value component is computed as follows:

	Loan balance	Time value component	Principal component
1995	\$3,790,786	\$379,079	
1996	4,169,865	416,987	
1997	4,586,852	458,685	
1998	5,045,537	504,554	
1999	5,550,091	555,009	\$6,105,100

(b) The amortization of *H*'s yield adjustment fee is equal to the amortization of a yield adjustment fee of \$3,790,786 paid in advance (as described in Example 5).

increased by the time value component of the \$3,790,786 deemed loan from *G* to *H*. Thus, the amount of *H*'s yield adjustment fee that is allocated to 1995 is \$1,000,000 (\$620,921

+ \$379,079). The time value components of the \$3,790,786 loan are included in the periodic payments paid by *H*, but are not characterized as interest income or expense.

The net of the ratable daily portions of the 11% swap payments by G, and the LIBOR payments by H, added to the principal components from Example 5 and the time value components from this Example 6, determines the annual net income or net deduction from the contract for both G and H.

Example 7. Nonperiodic payment on a commodity swap amortized under general rule. (a) On January 1, 1995, F enters into a commodity swap agreement with unrelated counterparty J under which, for a term of three years, F is obligated to make annual payments based on a fixed price of \$2.35 per bushel times a notional amount of 100,000 bushels of corn and J is obligated to make

annual payments equal to the spot price times the same notional amount. Assume that on January 1, 1995, the price of a one year forward for corn is \$2.40 per bushel, of a two year forward \$2.55 per bushel, and of a 3 year forward \$2.75 per bushel. To compensate for the below-market fixed price provided in the swap agreement, F pays J \$53,530 for entering into the swap. F and J are calendar year taxpayers.

(b) This contract is a notional principal contract as defined by paragraph (c)(1) of this section, and \$2.35 and the spot price of corn are specified indices under paragraphs (c)(2)(i) and (iii) of this section, respectively. The \$53,530 payment is a nonperiodic

payment as defined by paragraph (f)(1) of this section.

(c) Assuming that F does not use the alternative methods provided under paragraph (f)(2)(iii) of this section, paragraph (f)(2)(ii) of this section requires that F recognize the nonperiodic payment over the term of the agreement by allocating the payment to each forward contract in accordance with the forward price of corn. Solely for timing purposes, F treats the \$53,530 nonperiodic payment as a loan that F will repay in three installments of \$5,000, \$20,000, and \$40,000, the expected payouts on the in-the-money forward contracts. With annual compounding at 8%, the ratable daily portions are computed as follows:

	Expected forward payment	Time value component	Principal component
1995	\$5,000	\$4,282	\$718
1996	20,000	4,225	15,775
1997	40,000	2,963	37,037
	\$65,000	\$11,470	\$53,530

(d) The ratable daily portion of the principal component is added to F's periodic payments in computing its net income or net deduction from the notional principal contract for each taxable year. The time value components are needed only to compute the principal components, and are otherwise disregarded.

(g) **Special rules—(1) Disguised notional principal contracts.** The Commissioner may recharacterize all or part of a transaction (or series of transactions) if the effect of the transaction (or series of transactions) is to avoid the application of this section.

(2) **Hedged notional principal contracts.** If a taxpayer, either directly or through a related person (as defined in paragraph (c)(4)(i) of this section), reduces risk with respect to a notional principal contract by purchasing, selling, or otherwise entering into other notional principal contracts, futures, forwards, options, or other financial contracts (other than debt instruments), the taxpayer may not use the alternative methods provided in paragraphs (f)(2)(iii) and (v) of this section. Moreover, where such positions are entered into to avoid the appropriate timing or character of income from the contracts taken together, the Commissioner may require that amounts paid to or received by the taxpayer under the notional principal contract be treated in a manner that is consistent with the economic substance of the transaction as a whole.

(3) **Options and forwards to enter into notional principal contracts.** An option or forward contract that entitles or obligates a person to enter into a notional principal contract is subject to

the general rules of taxation for options or forward contracts. Any payment with respect to the option or forward contract is treated as a nonperiodic payment for the underlying notional principal contract under the rules of paragraphs (f) and (g)(4) or (g)(5) of this section if and when the underlying notional principal contract is entered into.

(4) **Swaps with significant nonperiodic payments.** A swap with significant nonperiodic payments is treated as two separate transactions consisting of an on-market, level payment swap and a loan. The loan must be accounted for by the parties to the contract independently of the swap. The time value component associated with the loan is not included in the net income or net deduction from the swap under paragraph (d) of this section, but is recognized as interest for all purposes of the Internal Revenue Code. See paragraph (g)(6) Example 3 of this section. For purposes of section 956, the Commissioner may treat any nonperiodic swap payment, whether or not it is significant, as one or more loans.

(5) **Caps and floors that are significantly in-the-money.** [Reserved]

(6) **Examples.** The following examples illustrate the application of paragraph (g) of this section.

Example 1. Cap hedged with options. (a) On January 1, 1995, K sells to unrelated counterparty L three cash settlement European-style put options on Eurodollar time deposits with a strike rate of 9%. The options have exercise dates of January 1, 1996, January 1, 1997, and January 1, 1998, respectively. If LIBOR exceeds 9% on any of the exercise dates, L will be entitled, by

exercising the relevant option, to receive from K an amount that corresponds to the excess of LIBOR over 9% times \$25 million. L pays K \$650,000 for the three options. Furthermore, K is related to F, the cap purchaser in paragraph (f)(4) Example 1 of this section.

(b) K's option agreements with L reduce risk with respect to F's cap agreement with E. Accordingly, under paragraph (g)(2) of this section, F cannot use the alternative methods provided in paragraph (f)(2)(v) of this section to amortize the premium paid under the cap agreement. F must amortize the cap premium it paid in accordance with paragraph (f)(2)(iv) of this section.

(c) The method that E may use to account for its agreement with F is not affected by the application of paragraph (g)(2) of this section to F.

Example 2. Nonperiodic payment that is not significant. (a) On January 1, 1995, G enters into an interest rate swap agreement with unrelated counterparty H under which, for a term of five years, G is obligated to make annual payments at 11% and H is obligated to make annual payments at LIBOR on a notional principal amount of \$100 million. At the time G and H enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, on January 1, 1995, H pays G a yield adjustment fee of \$3,790,786. G provides H with information that indicates that the amount of the yield adjustment fee was determined as the present value, at 10% compounded annually, of five annual payments of \$1,000,000 ($1\% \times \$100,000,000$). G and H are calendar year taxpayers. (These facts are the same as in paragraph (f)(4) Example 5 of this section.)

(b) In this situation, the yield adjustment fee of \$3,790,786 is not a significant nonperiodic payment within the meaning of paragraph (g)(4) of this section, in light of the amount of the fee in proportion to the present value of the total amount of fixed payments

due under the contract. Accordingly, no portion of the swap is recharacterized as a loan for purposes of this section.

Example 3. Significant nonperiodic payment. (a) On January 1, 1995, unrelated parties M and N enter into an interest rate swap contract. Under the terms of the contract, N agrees to make five annual payments to M equal to LIBOR times a notional principal amount of \$100 million. In return, M agrees to pay N 6% of \$100 million annually, plus \$15,163,147 on January 1, 1995. At the time M and N enter into this swap agreement the rate for similar on-market swaps is LIBOR to 10%, and N

provides M with information that the amount of the initial payment was determined as the present value, at 10% compounded annually, of five annual payments from M to N of \$4,000,000 (4% of \$100,000,000).

(b) Although the parties have characterized this transaction as an interest rate swap, the \$15,163,147 payment from M to N is significant when compared to the present value of the total fixed payments due under the contract. Accordingly, under paragraph (g)(4) of this section, the transaction is recharacterized as consisting of both a \$15,163,147 loan from M to N that N repays in installments over the term of the

agreement, and an interest rate swap between M and N in which M immediately pays the installment payments on the loan back to N as part of its fixed payments on the swap in exchange for the LIBOR payments by N.

(c) The yield adjustment fee is recognized over the life of the agreement by treating the \$15,163,147 as a loan that will be repaid with level payments over five years. Assuming a constant yield to maturity and annual compounding at 10%, M and N account for the principal and interest on the loan as follows:

	Level payment	Interest component	Principal component
1995	\$4,000,000	\$1,516,315	\$2,483,685
1996	4,000,000	1,267,946	2,732,054
1997	4,000,000	994,741	3,005,259
1998	4,000,000	694,215	3,305,785
1999	4,000,000	363,636	3,636,364
	\$20,000,000	\$4,836,853	\$15,163,147

(d) M recognizes interest income, and N claims an interest deduction, each taxable year equal to the interest component of the deemed installment payments on the loan. These interest amounts are not included in the parties' net income or net deduction from the swap contract under paragraph (d) of this section. The principal components are needed only to compute the interest component of the level payment for the following period, and do not otherwise affect the parties' net income or net deduction from this contract.

(e) N also makes swap payments to M based on LIBOR, and receives swap payments from M at a fixed rate that is equal to the sum of the stated fixed rate and the rate calculated by dividing the deemed level annual payments on the loan by the notional principal amount. Thus, the fixed rate on this swap is 10%, which is the sum of the stated rate of 6% and the rate calculated by dividing the annual loan payment of \$4,000,000 by the notional principal amount of \$100,000,000, or 4%. Using the methods provided in paragraph (e)(2) of this section, the swap payments from M to N of \$10,000,000 (10% of \$100,000,000) and the LIBOR swap payments from N to M are included in the parties' net income or net deduction from the contract for each taxable year.

Example 4. Swaps recharacterized as a loan. (a) The facts are the same as in Example 3, except that on January 1, 1995, N also enters into an interest rate swap agreement with unrelated counterparty O under which, for a term of five years, N is obligated to make annual payments at 12% and O is obligated to make annual payments at LIBOR on a notional principal amount of \$100 million. At the time N and O enter into this swap agreement, the rate for similar on-market swaps is LIBOR to 10%. To compensate for this difference, O pays N an upfront yield adjustment fee of \$7,581,574. This yield adjustment fee equals the present value, at 10% compounded annually, of five

annual payments of \$2,000,000 (2% of \$100,000,000).

(b) In substance, these two interest rate swaps are the equivalent of a fixed rate borrowing by N of \$22,744,721 (\$15,163,147 from M plus \$7,581,574 from O). Under paragraph (g)(2) of this section, if these positions were entered into to avoid interest character on a net loan position, the Commissioner may recharacterize the swaps as a loan which N will repay with interest in five annual installments of \$6,000,000 each (the difference between the 12% N pays under the swap with O and the 6% N receives under the swap with M, multiplied by the \$100,000,000 notional principal amount).

(c) N recognizes no net income or net deduction from these contracts under paragraph (d) of this section because, as to N, there is no notional principal contract income or expense. However, the recharacterization of N's separate transactions as a loan has no effect on the way M and O must each account for their notional principal contracts under paragraphs (d) through (g) of this section.

(h) **Termination payments—(1) Definition.** A payment made or received to extinguish or assign all or a proportionate part of the remaining rights and obligations of any party under a notional principal contract is a termination payment to the party making the termination payment and the party receiving the payment. A termination payment includes a payment made between the original parties to the contract (an extinguishment), a payment made between one party to the contract and a third party (an assignment), and any gain or loss realized on the exchange of one notional principal contract for another. Where one party assigns its remaining rights and obligations to a

third party, the original nonassigning counterparty realizes gain or loss if the assignment results in a deemed exchange of contracts and a realization event under section 1001.

(2) **Taxable year of inclusion and deduction by original parties.** Except as otherwise provided (e.g., in section 453 or 1092), a party to a notional principal contract recognizes a termination payment in the year the contract is extinguished, assigned, or exchanged. When the termination payment is recognized, the party also recognizes any other payments that have been made or received pursuant to the notional principal contract, but that have not been recognized under paragraph (d) of this section. If only a proportionate part of a party's rights and obligations is extinguished, assigned, or exchanged, then only that proportion of the unrecognized payments is recognized under the previous sentence.

(3) **Taxable year of inclusion and deduction by assignees.** A termination payment made or received by an assignee pursuant to an assignment of a notional principal contract is recognized by the assignee under the rules of paragraphs (f) and (g)(4) or (g)(5) of this section as a nonperiodic payment for the notional principal contract that is in effect after the assignment.

(4) **Special rules—(i) Assignment of one leg of a contract.** A payment is not a termination payment if it is made or received by a party in exchange for assigning all or a portion of one leg of a notional principal contract at a time when a substantially proportionate amount of the other leg remains

unperformed and unassigned. The payment is either an amount loaned, an amount borrowed, or a nonperiodic payment, depending on the economic substance of the transaction to each party. This paragraph (h)(4)(i) applies whether or not the original notional principal contract is terminated as a result of the assignment.

(ii) *Substance over form.* Any economic benefit that is given or received by a taxpayer in lieu of a termination payment is a termination payment.

(5) *Examples.* The following examples illustrate the application of this paragraph (h). All of the examples assume that no loss deferral rules apply.

Example 1. Termination by extinguishment. (a) On January 1, 1995, P enters into an interest rate swap agreement with unrelated counterparty Q under which, for a term of seven years, P is obligated to make annual payments based on 10% and Q is obligated to make semi-annual payments based on LIBOR and a notional principal amount of \$100 million. P and Q are both calendar year taxpayers. On January 1, 1997, when the fixed rate on a comparable LIBOR swap has fallen to 9.5%, P pays Q \$1,895,393 to terminate the swap.

(b) The payment from P to Q extinguishes the swap contract and is a termination payment, as defined in paragraph (h)(1) of this section, for both parties. Accordingly, under paragraph (h)(2) of this section, P recognizes a loss of \$1,895,393 in 1997 and Q recognizes \$1,895,393 of gain in 1997.

Example 2. Termination by assignment. (a) The facts are the same as in Example 1, except that on January 1, 1997, P pays unrelated party R \$1,895,393 to assume all of P's rights and obligations under the swap with Q. In return for this payment, R agrees to pay 10% of \$100 million annually to Q and to receive LIBOR payments from Q for the remaining five years of the swap.

(b) The payment from P to R terminates P's interest in the swap contract with Q and is a termination payment, as defined in paragraph (h)(1) of this section, for P. Under paragraph (h)(2) of this section, P recognizes a loss of \$1,895,393 in 1997. Whether Q also has a termination payment with respect to the payment from P to R is determined under section 1001.

(c) Under paragraph (h)(3) of this section, the assignment payment that R receives from P is a nonperiodic payment for an interest rate swap. Because the assignment payment is not a significant nonperiodic payment within the meaning of paragraph (g)(1) of this section, R amortizes the \$1,895,393 over the five year term of the swap agreement under paragraph (f)(2) of this section.

Example 3. Assignment of swap with yield adjustment fee. (a) The facts are the same as in Example 2, except that on January 1, 1995, Q paid P a yield adjustment fee to enter into the seven year interest rate swap. In accordance with paragraph (f)(2) of this section, P and Q included the ratable daily portions of that nonperiodic payment in their net income or net deduction from the

contract for 1995 and 1996. On January 1, 1997, \$300,000 of the nonperiodic payment has not yet been recognized by P and Q.

(b) Under paragraph (h)(2) of this section, P recognizes a loss of \$1,595,393 (\$1,895,393-\$300,000) in 1997. R accounts for the termination payment in the same way it did in Example 2; the existence of an unamortized payment with respect to the original swap has no effect on R.

Example 4. Assignment of one leg of a swap. (a) On January 1, 1995, S enters into an interest rate swap agreement with unrelated counterparty T under which, for a term of five years, S will make annual payments at 10% and T will make annual payments at LIBOR on a notional principal amount of \$50 million. On January 1, 1996, unrelated party U pays T \$15,849,327 for the right to receive the four remaining \$5,000,000 payments from S. Under the terms of the agreement between S and T, S is notified of this assignment, and S is contractually bound thereafter to make its payments to U on the appropriate payment dates. S's obligation to pay U is conditioned on T making its LIBOR payment to S on the appropriate payment dates.

(b) Because T has assigned to U its rights to the fixed rate payments, but not its floating rate obligations under the notional principal contract, U's payment to T is not a termination payment as defined in paragraph (h)(1) of this section, but is covered by paragraph (h)(4)(i) of this section. The economic substance of the transaction between T and U is a loan that does not affect the way that S and T account for the notional principal contract under this section.

(i) *Anti-abuse rule.* If a taxpayer enters into a transaction with a principal purpose of applying the rules of this section to produce a material distortion of income, the Commissioner may depart from the rules of this section as necessary to reflect the appropriate timing of income and deductions from the transaction.

(j) *Effective date.* These regulations are effective for notional principal contracts entered into on or after December 13, 1993.

Par. 5. Section 1.451-1 is amended by adding paragraph (f) to read as follows:

§ 1.451-1 General rule for taxable year of inclusion.

(f) *Timing of income from notional principal contracts.* For the timing of income with respect to notional principal contracts, see § 1.446-3.

Par. 6. Section 1.461-4 is amended by adding paragraph (f) to read as follows:

§ 1.461-4 Economic performance.

(f) *Timing of deductions from notional principal contracts.* Economic performance on a notional principal contract occurs as provided under § 1.446-3.

Par. 7. Section 1.988-2 is amended by adding paragraph (h) to read as follows:

§ 1.988-2 Recognition and computation of exchange gain or loss.

(h) *Timing of income and deductions from notional principal contracts.* Except as otherwise provided (e.g., in § 1.988-5 or 1.446-3(g)), income or loss from a notional principal contract described in § 1.988-1(a)(2)(iii)(B) (other than a currency swap) is exchange gain or loss. For the rules governing the timing of income and deductions with respect to notional principal contracts, see § 1.446-3. See paragraph (e)(2) of this section with respect to currency swaps.

Par. 8. Section 1.1092(d)-1 is added to read as follows:

§ 1.1092(d)-1 Definitions and Special Rules.

(a) *Actively traded.* Actively traded personal property includes any personal property for which there is an established financial market.

(b) *Established financial market—(1) In general.* For purposes of this section, an established financial market includes—

(i) A national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934;

(iii) A domestic board of trade designated as a contract market by the Commodities Futures Trading Commission;

(iv) A foreign securities exchange or board of trade that satisfies analogous regulatory requirements under the law of the jurisdiction in which it is organized (such as the London International Financial Futures Exchange, the Marche a Terme International de France, the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Frankfurt Stock Exchange, and the Tokyo Stock Exchange);

(v) An interbank market;

(vi) An interdealer market (as defined in paragraph (b)(2)(i) of this section); and

(vii) Solely with respect to a debt instrument, a debt market (as defined in paragraph (b)(2)(ii) of this section).

(2) *Definitions—(i) Interdealer market.* An interdealer market is characterized by a system of general circulation (including a computer listing disseminated to subscribing brokers,

dealers, or traders) that provides a reasonable basis to determine fair market value by disseminating either recent price quotations (including rates, yields, or other pricing information) of one or more identified brokers, dealers, or traders or actual prices (including rates, yields, or other pricing information) of recent transactions. An interdealer market does not include a directory or listing of brokers, dealers, or traders for specific contracts (such as yellow sheets) that provides neither price quotations nor actual prices of recent transactions.

(ii) *Debt market.* A debt market exists with respect to a debt instrument if price quotations for the instrument are readily available from brokers, dealers, or traders. A debt market does not exist with respect to a debt instrument if—

(A) No other outstanding debt instrument of the issuer (or of any person who guarantees the debt instrument) is traded on an established financial market described in paragraph (b)(1)(i), (ii), (iii), (iv), (v), or (vi) of this section (other than debt);

(B) The original stated principal amount of the issue that includes the debt instrument does not exceed \$25 million;

(C) The conditions and covenants relating to the issuer's performance with respect to the debt instrument are materially less restrictive than the conditions and covenants included in all of the issuer's other traded debt (e.g., the debt instrument is subject to an economically significant subordination provision whereas the issuer's other traded debt is senior); or

(D) The maturity date of the debt instrument is more than 3 years after the latest maturity date of the issuer's other traded debt.

(c) *Notional principal contracts.* For purposes of section 1092(d)—

(1) A notional principal contract (as defined in § 1.446-3(c)(1)) constitutes

personal property of a type that is actively traded if contracts based on the same or substantially similar specified indices are purchased, sold, or entered into on an established financial market within the meaning of paragraph (b) of this section; and

(2) The rights and obligations of a party to a notional principal contract are rights and obligations with respect to personal property and constitute an interest in personal property.

(d) *Effective dates.* Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

Approved: October 4, 1993
Margaret Milner Richardson,
Commissioner of Internal Revenue.
Leslie Samuels,
Assistant Secretary of the Treasury.
[FR Doc. 93-25192 Filed 10-8-93; 1:26 pm]
BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-4788-5]

Solid Waste Disposal Facility Criteria; Delay of the Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: EPA is making technical corrections to the Table "Summary of Changes to the Effective Dates of the MSWLF Criteria" which was included in the preamble to the final rule "Solid Waste Disposal Facility Criteria; Delay of the Effective Date" that appeared in the Federal Register on October 1, 1993 (58 FR 51536). This correction notice

will amend errors that appear in the portion of the table related to "Effective date of ground-water monitoring and corrective action."

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David Hockey (202) 260-7596.

SUPPLEMENTARY INFORMATION: On October 1, 1993, EPA promulgated a final rule under Subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act delaying the effective date of the Municipal Solid Waste Landfill Criteria (58 FR 51536). The preamble to the rule included a table on pages 51543 and 51544 that summarized the effective dates of the final rule. That rule contained minor editorial errors that EPA is correcting in this action. The corrections are for the table "Summary of Changes to the Effective Dates of the MSWLF Criteria" for the row titled "Effective date of ground-water monitoring and corrective action." For the category of MSWLF units accepting 100 TPD or less; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93: the effective date for new units should read October 9, 1993 and not October 9, 1994. For the category of MSWLF units that meet the small landfill exemption in 40 CFR 258.1(f): the effective date for existing units and lateral expansions should read October 9, 1995 through October 9, 1996 and not October 9, 1996 only. For the category of MSWLF units receiving flood-related waste: the effective date for new units should read October 9, 1993 and not October 9, 1994.

Correction of Publication

Accordingly, the final rule is corrected by revising the table on pages 51543 and 51544 to read as follows:

SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA¹

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting 100 TPD or less; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
General effective date ²	October 9, 1993	April 9, 1994	October 9, 1995	Up to October 9, 1994 as determined by State.
This is the effective date for location, operation, design, and closure/post-closure.				
Date by which to install final cover if cease receipt of waste by the general effective date.	October 9, 1994	October 9, 1994	October 9, 1996	Within one year of date determined by State; no later than October 9, 1995.

SUMMARY OF CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA¹—Continued

	MSWLF units accepting greater than 100 TPD	MSWLF units accepting 100 TPD or less; are not on the NPL; and are located in a state that has submitted an application for approval by 10/9/93	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)	MSWLF units receiving flood-related waste
Effective date of ground-water monitoring and corrective action.	Prior to receipt of waste for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.	October 9, 1993 for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.	October 9, 1995 for new units; October 9, 1995 through October 9, 1996 for existing units and lateral expansions.	October 9, 1993 for new units; October 9, 1994 through October 9, 1996 for existing units and lateral expansions.
Effective date of financial assurance requirements.	April 9, 1995	April 9, 1995	October 9, 1995	April 9, 1995.

¹ This Table provides a summary of the major changes to the effective dates. See the final rule and preamble published on October 1, 1993 (58 FR 51536) for a full discussion of all changes and related conditions. All other versions of this table, including the version in the October 1, 1993 Federal Register (58 FR 51536) on pages 51543 and 51544, are obsolete.

² If a MSWLF unit receives waste after this date, the unit must comply with all of Part 258.

Authority

EPA is promulgating these regulations under the authority of sections 2002 and 4010(c) of the Resource Conservation and Recovery Act of 1976, as amended. 42 USC 6912.

Dated: October 5, 1993.

Walter W. Kovalick, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93-25100 Filed 10-13-93; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION**41 CFR Part 302-6**

[FTR Amendment 31]

RIN 3090-AE92

Federal Travel Regulation; Increase in Maximum Reimbursement Limitations for Real Estate Sale and Purchase Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to increase the maximum dollar limitations on reimbursement for allowable real estate sale and purchase expenses incident to a change of official station. Section 5724a(a)(4)(B) of title 5, United States Code requires that the dollar limitations be updated effective October 1 of each year based on the percent change, if any, in the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component, for December of the

preceding year over December of the second preceding year. This final rule will have a favorable impact on Federal employees authorized to relocate in the interest of the Government since it increases relocation allowance maximums.

EFFECTIVE DATE: This final rule is effective October 1, 1993, and applies to employees whose effective date of transfer is on or after October 1, 1993. For purposes of this regulation, the effective date of transfer is the date on which the employee reports for duty at the new official station.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: This final rule makes the annual adjustment to the maximum reimbursement limitations for the sale and purchase of an employee's residence when the employee transfers in the interest of the Government. The total amount of expenses that may be reimbursed in connection with the sale of a residence shall not exceed 10 percent of the actual sale price or \$21,340, whichever is the lesser amount. The total amount of expenses that may be reimbursed in connection with the purchase of a residence shall not exceed 5 percent of the purchase price or \$10,669, whichever is the lesser amount.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in

costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-6

Government employees, Relocation allowances and entitlements, Transfers

For the reasons set out in the preamble, 41 CFR part 302-6 is amended as follows:

PART 302-6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

1. The authority citation for part 302-6 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971-1975 Comp., p. 586.

302-6.2 [Amended]

2. Section 302-6.2 is amended by removing the amount "\$20,799" in paragraph (g)(1), and adding in its place the amount "\$21,340"; and by removing the amount "\$10,399" in paragraph (g)(2) and adding in its place the amount "\$10,669".

Dated: September 8, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93-25183 Filed 10-13-93; 8:45 am]

BILLING CODE 8820-24-F

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 97**

(DA 93-1158)

Deletion of Station Location on Amateur Application Form

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Order deletes the requirement in the amateur service rules that a station location be specified on the application. The Order recognizes that the extensive use of mobile and portable equipment results in frequent changes of the station's transmitting location. In addition, this action will expedite the processing of amateur service license applications.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT:

Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:**Order**

Adopted: September 24, 1993.

Released: October 7, 1993.

By the Chief, Private Radio Bureau:

1. Section 97.21 of the Commission's Rules, 47 CFR 97.21, currently provides that each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show, among other things, a station location in an area where the amateur service is regulated by the FCC. The rule also provides that the station location must be a place where a station can be physically located.

2. In order to expedite the processing of amateur service license applications, it is desirable to delete the requirement that a station location be specified on the application. Further, because portable and mobile equipment is currently widely used in the amateur service, a station's location when transmitting often changes, sometimes even daily.

3. We believe that this rule amendment is not likely to be controversial. Further, it relates to a nonsubstantive change in the Commission's licensing procedures. The notice and comment provisions of Section 553 of the Administrative Procedure Act, 5 U.S.C. 553, therefore, need not be complied with. Authority for this action is contained in Section 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

4. Accordingly, § 97.21, is amended, effective November 15, 1993, as set forth below.

List of Subjects in 47 CFR Part 97**Radio.**

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Rule Change

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for Part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.21 is revised to read as follows:

§ 97.21 Mailing address.

Each application for an amateur service license and each application for a reciprocal permit for alien amateur licensee must show a mailing address in an area where the amateur service is regulated by the FCC. The mailing address must be one where the licensee can receive mail delivery by the United States Postal Service.

[FR Doc. 93-25137 Filed 10-13-93; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Part 1833**

Change to the NASA FAR Supplement Reflecting the Discontinuance of the NASA Board of Contract Appeals (NASA BCA) and Its Merger With the Armed Services Board of Contract Appeals (ASBCA)

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice amends the NASA FAR Supplement, part 1833, to reflect that the NASA BCA no longer exists as a separate entity and that its functions are now accomplished by the ASBCA.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT:

Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358-0482.

SUPPLEMENTARY INFORMATION:**Background**

On August 23, 1993, an interim rule to amend the NASA FAR Supplement to reflect the discontinuance of the NASA BCA and the assumption of its functions by the ASBCA was published in the Federal Register for comment (58 FR 44462). No public comments were received. Consequently, under the authority of 42 U.S.C. 2473(c)(1), NASA is adopting as a final rule the text set out as the interim rule at 58 FR 44462 with no changes.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1833

Government Procurement.

Tom Luedtke,

Acting Deputy Associate Administrator for Procurement.

[FR Doc. 93-25253 Filed 10-14-93; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 227, 672, and 675**

[Docket No. 930949-3249; I.D. 092393A]

Threatened Fish and Wildlife; Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Steller Sea Lion Protection Areas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces technical amendments to final rules implementing Steller sea lion protection areas authorized under the Endangered Species Act (ESA), the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA), and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands management area (BSAI). The technical amendments revise regulations by correcting seven tables listing longitude and latitude of Steller sea lion